

EXHIBIT C

Goldsmith, Andrew M.

From: Goldsmith, Andrew M.
Sent: Monday, March 13, 2023 4:45 PM
To: lawatf (null)
Cc: vikerlaw@gmail.com; keisha.rice@gmail.com; Zakarin, Donald S.; Farkas, Ilene S.; Maida, Brian M.
Subject: RE: Liability PTO - Revised
Attachments: 210 - List of Prior Art Songs.pdf; 212 - Sheet Music - People Get Ready, Lo and Behold, Billie Jean.pdf; Track Changes Redline.docx; Revised Liability PTO [Based on version from Plaintiffs dated 2.21.23].DOCX

Pat:

In addition to the below noted change, we have made a few more minor changes, reflected in the attached "Track Changes Redline." I also am attaching a clean version and revised versions of Exhibits 210 and 212.

ANDREW M. GOLDSMITH

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From: Goldsmith, Andrew M.
Sent: Monday, March 13, 2023 11:35 AM
To: lawatf (null) <lawatf@aol.com>
Cc: vikerlaw@gmail.com; keisha.rice@gmail.com; Zakarin, Donald S. <DZakarin@PRYORCASHMAN.com>; Farkas, Ilene S. <IFarkas@PRYORCASHMAN.com>; Maida, Brian M. <BMaida@PRYORCASHMAN.com>
Subject: Liability PTO - Revised

Pat:

Further to our email exchange on Friday, I am attaching a revised Liability PTO for your signature. Please note the following changes:

- Per the Court's ruling on Friday, we removed Exhibit 101 (your proposed performance of the Deposit Copy), Exhibit 104 (the Billboard Article), Exhibit 105 (the Spin Article) and Exhibit 110 (the Liner Notes)
- With respect to Exhibits 106 and 124, we altered our objection to indicate that the Court denied our motion in limine without prejudice as to those two Exhibits
- Per your request, we put the LGO Recording back in to the PTO (and made it Exhibit 101), and we insert a corresponding objection
- We made one change to our section – specifically, we have augmented Exhibit 200, as indicated, to include Dr. Ferrara's reproduction of the Deposit Copy with markings and his transposed transcription of the Deposit Copy with markings. I am attaching the updated Exhibit 200.

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LIST OF 101 PRIOR ART WORKS
(All 101 Predate *Thinking Out Loud*; 37 Also Predate *Let's Get It On*)

Pre-LGO (1973), 33 Songs With I, iii, IV, V Chord Progression

1. "Christmas Bride" (1959) Ray Conniff
2. "True Love Ways" (1960) Buddy Holly and (1965) Peter & Gordon
3. "Last One to Know" (1961) The Fleetwoods
4. "Mister Lonely" (1962) Bobby Vinton
5. "Big Girls Don't Cry" (1962) The Four Seasons
6. "If I Had a Hammer" (1962) Peter, Paul and Mary
7. "You Lost The Sweetest Boy" (1963) Mary Wells
8. "Once Upon a Dream" (1963) Billy Fury
9. "Sugar and Spice" (1963) The Searchers
10. "Christmas (Baby Please Come Home)" (1963) Darlene Love
11. "A Summer Song" (1964) Chad and Jeremy
12. "Fun, Fun, Fun" (1964) The Beach Boys
13. "I Do" (1964) The Castells and The Beach Boys
14. "Downtown" (1964) Petula Clark
15. "I Feel Fine" (1964) The Beatles
16. "I Go to Pieces" (1965) Peter & Gordon
17. "You Didn't Have to Be So Nice" (1965) The Lovin' Spoonful
18. "Turn Around" (1966) Sonny & Cher
19. "Just Like a Woman" (1966) Manfred Mann
20. "Since I Lost My Baby" (1966) Ray French
21. "You, Baby" (1966) The Turtles

18. The chord progression and the harmonic rhythm – and their specific selection and arrangement in “Let’s Get It On” – were not new or novel to “Let’s Get It On,” and their specific selection and arrangement was used in at least ~~two~~three successful songs that predate “Let’s Get It On” – “You Lost The Sweetest Boy” (1963, by Brian Holland, Lamont Dozier and Edward Holland Jr. and recorded by Mary Wells), “Georgy Girl” (1967) and “Since I Lost My Baby” (1966, as recorded by Ray French) – and in at least two songs that postdate “Let’s Get It On” but predate “Thinking Out Loud” – “I’ve Got Love On My Mind” (1977, by Natalie Cole) and “Six Pack Summer” (2000 by Phil Vassar); in addition, at least one successful song that predates “Let’s Get It On” uses the same selection and arrangement of the chord progression and the harmonic rhythm used in “Thinking Out Loud,” namely, “Do You Love Me?” (1962, by The Contours). (Trial Testimony of Dr. Lawrence Ferrara).³

19. There are no objectively significant similarities between the melodies in “Let’s Get It On” and “Thinking Out Loud.” (Trial Testimony of Dr. Lawrence Ferrara).

selection and arrangement still would not be identical or virtually identical to “Thinking Out Loud.” (Trial Testimony of Dr. Lawrence Ferrara).

³ Again, as set forth in detail in Defendants’ objection to Plaintiffs’ Proposed Findings of Fact Nos. 1-2, the key signature of “Let’s Get It On” cannot be considered as part of any alleged selection and arrangement, and it has been insinuated into this case at the eleventh hour by Plaintiffs despite never having been an alleged element of similarity. Nevertheless, assuming, *arguendo*, that the key of “Let’s Get It On” could be considered part of the alleged selection and arrangement, the selection and arrangement still would not be new or novel to “Let’s Get It On” because (i) the 1968 version of “Georgy Girl” by The Boston Pops and “You Lost The Sweetest Boy” (1963, as recorded by Mary Wells) isare both recorded in E Flat major (the same key as “Let’s Get It On”) and also features the same chord progression and harmonic rhythm at issue in “Let’s Get It On,” and (ii) “Since I Lost My Baby” (1966, as recorded by Ray French) is written in the key of E major, which is equally “close” in key to “Let’s Get It On” as “Thinking Out Loud” (“Let’s Get It On” is in the key of E flat major, and “Thinking Out Loud” is in the key of D major; thus, the key of both “Since I Lost My Baby” and “Thinking Out Loud” are one half-step away from the key of “Let’s Get It On”). (Trial Testimony of Dr. Lawrence Ferrara). Further, one cannot both transpose songs into the same key for purposes of comparing them and at the same time allege that their key, which is different here, somehow is an element of a selection and arrangement claim.